

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

STEVE RAY MENEFEE	§	
v.	§	CIVIL ACTION NO. 6:07cv314
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Steve Menefee, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of prison disciplinary action taken against him. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Menefee was charged with the disciplinary offenses of possession of marijuana and possession of a tobacco product. As punishment, he received 45 days loss of commissary privileges, 45 days of cell restrictions, 14 days of solitary confinement, reduction in classification status, and the loss of 730 days of good time.

Menefee argued that there was insufficient evidence to support the finding of guilt, that the hearing officer was not impartial and failed to consider the evidence showing his innocence, and that the finding of guilt denied him due process. The Magistrate Judge ordered the Respondent to answer the petition, and Menefee filed a response to the answer.

After review of the pleadings and records, the Magistrate Judge issued a Report recommending that the petition be denied. Menefee did not file objections to this Report; however, the Respondent filed objections on a limited basis, arguing that the Magistrate Judge had not considered the question of whether or not Menefee had exhausted his administrative remedies on his

claim that the hearing officer was not impartial. A review of the Report shows that the Magistrate Judge addressed this claim on the merits and rejected it. The Respondent's objections are without merit. Because Menefee did not file objections to the Magistrate Judge's Report, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the Magistrate Judge. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition, the motion to dismiss filed by the Respondent, the Report of the Magistrate Judge, the Respondent's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the Respondent are without merit. It is accordingly

ORDERED that the Respondent's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Steve Menefee is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 5th day of June, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**